

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Creation of a Low Power Radio Service ) MM Docket No. 99-25  
 )

To: The Commission  
Attn: Chief, Media Bureau

**COMMENTS OF  
PUBLIC RADIO FM TRANSLATOR LICENSEES**

Alaska Public Telecommunications, Inc., Board of Regents of the University of Wisconsin System, Board of Trustees for San Diego State University, Greater Washington Educational Telecommunications Association, Iowa State University, KCBX, Inc., Kent State University, Nevada Public Radio, Ohio University, Oklahoma State University, Pacific Lutheran University, Inc., Regents of the University of New Mexico, State of Wisconsin – Educational Communications Board, The Ohio State University, WAMC, Washington State University, (collectively, the “Pub Radio Translators”), by their counsel, submit these joint comments in response to the Commission’s *Further Notice of Proposed Rulemaking* in MM Docket No. 95-31 (“*2nd LPFM NPRM*”), which, among other things, seeks to reassess the current co-equal status of LPFM and FM translator stations and give LPFMs “priority” over FM translators.

The Pub Radio Translators emphatically believe that the FCC should maintain the co-equal status of LPFMs and FM translators and that the public interest would be best served by keeping the current priorities of both services. While the Pub Radio Translators are sympathetic to (and share) the LPFMs concerns about the volume of March 2003 Translator Window applications filed by non-local filers without ties to local communities, the best resolution of that

problem is not to change the LPFM/FM translator priorities, but to restrict the number (and types) of FM translator applications filed or processed from the March 2003 filing window and in future windows, and to enforce strictly existing application requirements and FM translator policies.

The Pub Radio Translators agree with and support the comments of the Public Radio Regional Organizations (PRROs) in this proceeding, but comment separately based on their individual reasons for applying for their FM Translator stations and their long experience with using FM translator stations for listener service. Many of the Pub Radio translators have translator stations that have been in service for over twenty (20) years. The Pub Radio Translators believe that their experience as long-time FM translator licensees and their long commitment to public radio broadcasting and to public service give these joint comments particular weight. The Pub Radio Translators feel obliged to comment directly in this proceeding because of their interest in protecting existing and future public radio FM translator service.

### **Introduction and Summary**

The Pub Radio Translators are public and private universities and university systems, non-profit community licensees, statewide public broadcast networks or governmental educational telecommunications entities. The Pub Radio Translators are experienced licensees of public radio stations providing noncommercial educational broadcast services. Together, the Pub Radio Translators are the licensees or permittees of some 67 public radio translators that rebroadcast public radio programming. Together, the Pub Radio Translators have over 15 pending applications for new public radio FM translator stations (filed in the March 2003 window.) Thus, the Pub Radio Translators currently use (and have future plans to use) reserved

band FM translator channels as well as non-reserved band FM translator channels to fulfill the Congressional mandate in Section 396(a) of the Communications Act for the provision of noncommercial educational broadcasting services to the public.

The Pub Radio Translators include some of the nation's oldest educational broadcasters, who pioneered AM educational radio, FM educational radio, and educational TV and who have provided such services to the public for over 75 years in the case of radio and 45 years in the case of TV.

### **Public Radio FM Translators are “Local” Services**

The *2nd LPFM NPRM* (and the broadcast localism NOI) assume, incorrectly, that all FM translator services are not local services, or are somehow “less local” than LPFM service. This assumption is misplaced, and reflects a serious misconception of how listeners appreciate and use public radio FM translator service. For these listeners, public radio FM translator service is “local” and meets their needs and interests. That is why substantial local investments have created and supported the public radio FM translator system over the years (and presently). According to 1990 Census data, over nine (9) million persons in the United States receive a public radio signal through a public radio translator station.<sup>1</sup> Changing the priority of FM translator stations with respect to LPFMs would ignore long-standing local investments (by local listeners, local businesses and local community groups) in existing public radio FM translator service and jeopardize local citizens' efforts (sometimes of many years in the making) to bring new public radio FM translator service to their communities.<sup>2</sup>

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<sup>1</sup> Corporation for Public Broadcasting, Network Report, Census of Population and Housing (1990).

<sup>2</sup> The “local” nature of public radio translator services is further detailed in Appendix A to the Public Radio Regional Organizations (PRROs) Comments in this proceeding. Some of the Pub  
*continued...*

The stories of the Pub Radio Translators are compelling – they indicate the local nature of the services and the breadth and depth of listener appreciation and use of public radio FM translator service. For example, from Station KSKA(FM) in Anchorage, Alaska, whose five (5) translators serve rural populations of 2000, 4500, 200, 900 and 4300 persons, respectively:

“Our translators carried our station's programming and provided critical emergency information to listeners during the Miller's Reach wildfires. Our news director, while reporting live from the road was warning of smoke obscuring the road in areas and the need to have car lights on in case a driver suddenly entered a cloud of smoke. He was struck by the power of our broadcasts when cars all around him started turning on their lights.”

“The first climber to successfully climb Mt. McKinley in winter, Vern Tejas, was pinned down and had run out of food. Another climber knew of a food cache nearby. Tejas could hear KSKA from our translator and we broadcast the information. He survived and made it down the mountain alive.”

“My personal anecdote was years ago playing Just Jazz. I got a call from the marine operator who patched through a call from a fishing boat on the ocean. The caller didn't want to request a song, he just wanted to say how much he was enjoying the music I was playing. I think of him regularly and how important our translator service was to him on that fishing boat.”

And, from KUNM(FM) in Albuquerque, New Mexico, whose seven (7) translators serve an extremely rural population of 50,025 persons, spread over an astounding 2,936 square kilometers of combined service areas (amounting to an average population density of 17.04 persons per square kilometer):

“New Mexico is a very rural and very poor state. All translators were built at request of communities. Our main station is more than a mile above average terrain and covers an approximate 60 mile radius from Albuquerque. Rural citizens drive in and out of our signal and requested our service. We believe that a root cause of poverty is lack of access to public service media and are fully committed to our rural communities.” (KUNM)

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Radio Translators' stories were already provided as part of Appendix A in the PRROs comments in this proceeding, but are repeated here, to ensure that the record is complete with respect to listener use and perception of public radio FM translators.

But KSKA and KUNM's stories are not unique, as stories from the other Pub Radio Translators show:

- \* “Public service is a cornerstone of KPLU. Our seven translators extend that public service to a quarter-million people in western Washington who otherwise would not be able to hear what we broadcast. No other delivery system can match the flexibility, affordability and convenience provided to the audience by broadcasting. Generally our translator signal provides the only comparable programming available to those people. No LPFM can match the breadth and quality of the programming KPLU provides to these audiences. In a more specific example, no LPFM can match the resources we allocate to northwest news, and the subsequent regional news programming we produce, which is local, relevant and valuable to the audiences tuning to our translators. Listeners to our translators show they value the service we provide by direct financial contributions. In every case the local money contributed from residents surrounding one of our translators covers the cost of providing our public service to that population.” (KPLU)
- \* “WOSU's investment in a translator in "downtown" Coshocton was at the direct request of local residents who had provided financial support for the creation of WOSE, but were not receiving the quality of signal they anticipated due to the location of the main transmitter related to nearby hills....The Coshocton Translator fills in an important gap in our coverage area as it serves the town of Coshocton that our full power transmitter does not reach due to terrain issues. Coshocton is a small, rural town with a loyal arts and cultural community that relies on this service for news and cultural that is provided only through this translator service to the town. We have regularly participated in arts and cultural activities in the community and are seen by citizens in the community as a lifeline to NPR news and classical music.” (WOSU)
- \* “My two translator are owned by a third-party, but will rebroadcast KOSU-FM...Together the two add an estimated 300,000 listeners...We added these translators to improve our service to the state of Oklahoma.”(KOSU)
- \* KPBS has “zero coverage on our main signal in [the La Jolla] area,” which has “significant portions of the [City of San Diego's] population.” (KPBS-FM)
- \* “With the exception of K215AG, we decided to make an investment in translators in order to reach those residents in our primary coverage area who were unserved due to extreme terrain conditions. K215AG serves an area north of Santa Barbara. Because of mountainous terrain, this area does not receive most other radio stations. We were the first public radio signal to serve most of this area.” (KCBX)
- \* “It is obvious that our translator signals are important to listeners in those areas. Firstly, KCBX receives significant monetary support from areas primarily served by translators. Secondly, whenever one of our translators has a technical problem, the telephones ring off the hook and emails come pouring in.” (KCBX)

Because the Pub Radio Translators are just a very small subset of all public radio translator licensees, these stories are illustrative only; there are many, many other untold stories out there about public radio translators and their listeners. The bottom line conclusion, however, remains the same -- local citizens believe in, support and rely on public radio translator service – as local service that meets their needs.

**There Is No Evidence That the Proposed “Solution”  
Would Resolve the LPFM Preclusion Problem**

The *2nd LPFM NPRM* suggests that the LPFM preclusion problem in large and medium-sized communities is due to the volume of filings in the March 2003 translator window.<sup>3</sup> With all due respect, however, neither the LPFM advocates nor the FCC have provided any evidence that giving LPFMs priority over FM translators would resolve the LPFM preclusion problem in large and medium-sized communities.<sup>4</sup> The Pub Radio Translators own experiences, prior to and since LPFMs were first authorized, are that virtually all major and most mid-sized markets are very spectrum-congested, such that neither new LPFMs nor new FM translator stations can be “shoe-horned” in, without interference to existing radio services. After admitting itself that the impact cannot be determined and absent some technical showing supporting the notion that a change in FM Translator/LPFM priorities would resolve the problem, the FCC should not take the draconian step of changing those priorities and jeopardizing existing and future listener service via FM translators.

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<sup>3</sup> “[W]e are confident that these [March 2003 window-filed FM translator applications] have had a significant preclusive impact on future LPFM licensing opportunities based solely on application volume.” *2nd LPFM NPRM* at para. 31.

<sup>4</sup> In fact, the *2nd LPFM NPRM* notes: “[I]t is impossible to determine the precise extent to which the 2003 window-filed FM translator applications have impacted the potential licensing of new LPFM stations.” *Id.*

While the Pub Radio Translators certainly agree that the extraordinary volume of FM translator applications by a small number of non-local filers without community connections in the March 2003 window has impacted LPFM (and future public radio translator) development, the LPFM advocates and the FCC must be careful not to throw the baby out with the bath water. As explained below, there are other, better ways to decrease the FM Translator application volume and weed out inappropriate, frivolous or non-bona-fide FM translator applicants, without a wholesale change in FM Translator/LPFM priorities.

Moreover, even if a technical study were to show that some LPFM preclusion could be alleviated in large and medium-sized markets by giving LPFMs priority over existing FM translators, the FCC must carefully weigh the public service impact of disrupting well-loved, long-locally-supported listener service via public radio FM translator stations in those areas (or in rural areas, where the cost and expenses of translator displacement might well be the death knell for some public radio FM translators.) The Pub Radio Translators believe, based on these Comments and those of the PRROs, that the record clearly shows that the public would not benefit by making FM translators secondary to LPFMs. Instead, the public interest would be harmed by loss (or potential loss) of such FM translator service.

**There Has Been a Significant Federal, State and Local Investment in  
Public Radio Translators**

Given the substantial federal investment in public broadcasting through the Corporation of Public Broadcasting (“CPB”) and the Public Telecommunications Facilities Program of NTIA, Department of Commerce (“PTFP”), as well as the substantial state and public monies that support public broadcasting on statewide, regional and local levels, it would be contrary to public policy to suddenly change the protections afforded to FM translator stations and make public radio FM translators lower in priority than LPFMs.

For decades, public radio translator stations have lived with the fact that they are secondary services that must make way for new or changed full-service radio facilities. In fact, the current extensive public radio FM translator system was developed with full knowledge of those risks. Even when translator service has been displaced, the public radio FM translators made their peace with those risks, albeit painfully. But to make a whole new (recent and still developing) LPFM service primary over FM translators is a horse of an entirely different color. That result would thwart the decades of investments by the federal government, by state governments and by local government in public radio FM translators.

In addition, in the majority of situations, public radio FM translator projects were funded, all or in part, by local citizens, local businesses and local organizations.<sup>5</sup> To destroy or jeopardize those local investments in public radio FM translators is not only contrary to the public interest, it is contrary to the very goals of localism that the FCC intended to serve with LPFMs.

### **The FCC Can Take More Effective, Less Draconian Measures to Resolve the FM Translator Application “Flood”**

The Pub Radio Translators are well aware of the congestion and preclusive effects stemming from the flood of 13,000 FM translator applications from the March 2003 window. These problems affect public radio stations’ translator plans, just as much as they affect LPFMs plans. Given that public radio FM translators use and plan to use both reserved band and unreserved band translator frequencies, any change of priorities that puts LPFMs above FM

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<sup>5</sup> See Pub Radio Translator stories, *supra*, pages 4-6. See also, PRRO Comments in this proceeding.



translators will have an adverse affect on public radio FM translator service, and therefore, some portion of the more than nine (9) million persons receiving public radio translator signals. There is no easy way to “segregate” translators, based on format or “localness,” such that only non-public radio translators are impacted.

There are, however, more effective and less draconian measures that the FCC can take to stem the preclusive effect of the March 2003 window filings and future FM translator filing windows. For example, the FCC could impose a nationwide cap on the number of FM translator stations that may be owned by one entity (or attributable entities). A nationwide cap would function (and serve policy rationales) like the cap on LPFM station ownership. Based on the Pub Radio Translators experience with translator ownership, a cap of 100 translator stations per entity would be reasonable (and generous).

Second, the FCC could impose a cap on the number of applications that could be filed by a single entity (or attributable entities) in any given FM Translator Filing Window. The FCC could apply this cap in the future, or could even apply this cap now – to the frozen, still-pending applications from the March 2003 window. Each applicant would be permitted to specify only a set number of applications to continue to process, and all other applications by that applicant (or related entity) would be dismissed. Both of these measures limit the volume and preclusive effect of FM translators on LPFMs, without going to the drastic effort of changing the co-equal priorities of the services, and thereby endangering the listenership of some nine (9) million persons receiving public radio translator signals.

Finally, the FCC could more strictly enforce current application or FM translator licensing criteria in processing the still-pending March 2003 Window applications, or adopt

more stringent application processing criteria designed to weed out speculative or frivolous applicants.

### **CONCLUSION**

For the reasons stated above, the Pub Radio Translators strongly urge the Commission to continue the current co-equal status of LPFM and FM translator stations. Existing and future public radio FM translator service should be preserved, not endangered by giving LPFMs priorities over translators. If the Commission were to give LPFM priority over translators, it can expect that existing (and highly valued) public radio translator listenership will be disrupted – to an unknown extent. Local needs that had been met by such translators will go unmet. This result would not support localism and would not serve the public interest.

Respectfully submitted,

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